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                       IN THE UNITED STATES DISTRICT COURT
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    EQUAL EMPLOYMENT
                                               CV
    OPPORTUNITY COMMISSION,
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                                               COMPLAINT
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                                               (JURY TRIAL DEMANDED)
                          Plaintiff,
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    VS.
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    iPAYMENT, INC., a foreign corporation;
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    NPMG ACQUISITION SUB, LLC, a
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    Tennessee corporation, d/b/a Principal
    Payment Solutions,
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                 Defendants.
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# NATURE OF THE ACTION

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This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, against Defendants iPayment, Inc. ("iPayment") and NPMG Acquisition Sub, LLC, doing business as Principal Payment Solutions ("NPMG"), to correct unlawful employment practices on the basis of race and to provide appropriate relief to Calvin Matthews, Tyrone Hunt, Michael Buckner, and a class of employees, who were adversely affected by such practices. The Equal Employment Opportunity Commission ("EEOC" or "Commission") alleges that

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 Defendants subjected Mssrs. Matthews, Hunt, and Buckner and a class of employees to unwelcome racial harassment, including racial slurs and comments by Defendants' managers and/or employees, which created a hostile work environment because of the Charging Parties' race.

# **JURISDICTION AND VENUE**

- 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3); and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
- 2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Arizona.

#### **PARTIES**

- 3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).
- 4. Defendant iPayment, Inc., a Delaware corporation, has continuously been doing business in the state of Arizona and has at all relevant times had at least fifteen employees.
- 5. At all relevant times, Defendant iPayment has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. § 2000e (b), (g) and (h).
- 6. Defendant NPMG Acquisition Sub, ("NPMG") a Tennessee corporation, has continuously been doing business in the state of Arizona and has at all relevant times had at least fifteen employees.

7. At all relevant times, Defendant NPMG has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. § 2000e (b), (g) and (h).

# STATEMENT OF CLAIMS

- 8. More than thirty days prior to the institution of this lawsuit, Charging Parties Calvin Matthews, Tyrone Hunt, and Michael Buckner each filed a Charge of Discrimination with the Commission, alleging that Defendants violated Title VII. All conditions precedent to the institution of this lawsuit have been fulfilled.
- 9. Charging Parties Matthews, Hunt, Buckner and a class of employees.were employed by Defendants iPayment and NPMG.
- 10. Since at least December 2004, Defendants iPayment and NPMG have engaged in unlawful employment practices at their Phoenix, Arizona facility in violation of Section 703 (a) of Title VII, 42 U.S.C. § 2000e-2(a). These practices include subjecting Mssrs Matthews, Hunt, and Buckner and a class of employees to unwelcome racial harassment, including racial comments and slurs by Defendants' managers and/or employees, which created a hostile work environment because of race.
- 11. The effect of the practices complained of in paragraph 10 above has been to deprive Calvin Matthews, Tyrone Hunt, Michael Buckner, and a class of employees of equal employment opportunities and otherwise adversely affect their status as employees because of their race, Black.
- 12. The unlawful employment practices complained of in paragraphs 10 through 11 above were intentional.
- 13. The unlawful employment practices complained of in paragraphs 10 through 11 above were done with malice or with reckless indifference to the federally protected rights of Calvin Matthews, Tyrone Hunt, Michael Buckner, and a class of employees.

# PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendants, their officers, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice which discriminates against any individual on the basis of race.
- B. Order Defendants to institute and carry out policies, practices, and programs which provide equal employment opportunities for applicants and employees regardless of race and which eradicate the effects of their past and present unlawful employment practices.
- C. Order Defendants to make whole Calvin Matthews, Tyrone Hunt, Michael Buckner, and a class of employees by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices described in paragraphs 10 through 13 above, including emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.
- D. Order Defendants to pay Calvin Matthews, Tyrone Hunt, Michael Buckner, and a class of employees punitive damages for their malicious conduct and/or reckless indifference described and referenced in paragraphs 10 through 13 above in amounts to be determined at trial.
- E. Grant such further relief as the Court deems necessary and proper in the public interest.
  - F. Award the Commission its costs in this action.

### **JURY DEMAND**

The Commission requests a trial by jury on all questions of fact raised by its complaint.

DATED this 30th day of September, 2008.

RONALD S. COOPER General Counsel

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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